

REMARKS/ARGUMENTS

Claims 24-41 and 43-48 are pending. Claims 1-23 have been previously canceled with traverse. Claims 32 and 42 are newly canceled. Claim 24 has been further amended. Claims 45 - 48 are newly submitted.

Applicants respectfully request reconsideration and allowance of the application in view of the present amendment and following remarks.

The claim amendment is fully supported by the application as originally filed.

The presently claimed invention resides in low density aerated milk compositions which retain an aerated texture for an extended shelf life at atmospheric pressure having a finished density of about 0.56 g/cc to 1.0 g/cc. The composition comprises a milk ingredient, a hydrated emulsifier blend and an aerating gas, and is substantially free of added proteins, hydrocolloids and other emulsifiers.

Support for amended claim 24 can be found in the specification at, for example, page 5, lines 9-18, page 6, line 15-35, and page 18, line 1.

Amendments to Specification

The specification has been amended on page 19, lines 10 – 12. An obvious typographical error was made listing sucrose rather than sucralose as a high potency sweetener.

Rejection Under 35 U.S.C. § 103 (a)

Claims 24 – 44 stand rejected under 35 U.S.C. § 103 (a) as being unpatentable over Amen et al (US 4,851,239) in view of Norris (US 3,671,459) and Jackson (WO 81/00061).

These references, alone or in combination, fail to teach or suggest the subject matter of amended claim 24 and claims 25-41, and 41-48 depending therefrom.

The primary reference, Amen et al., fails to teach or suggest a composition that includes as claimed in amended claim 24, "a hydrated emulsifier blend comprising: a. about 0.5% to 1.5% wetting agent; b. about 7% to 15% lactylated mono- and di-glycerides; and c. water." Moreover, to the extent Amen et al. discloses the use of mono- and diglycerides, Amen et al. teaches away from the present invention as claimed, because Amen et al. discloses that the mono- and di-glycerides are added to the yogurt product after it has been dispensed from the package (i.e. aerosol dispenser), (See, Amen et al. reference at col 4, lines 20-33). Whereas the present invention discloses the use of mono- and diglycerides in a shelf stable refrigerated dairy product.

Moreover, Amen et al. teaches away from the present invention in disclosing the use of colloids to produce the desired shelf-stable aerosol dispensable yogurt product, (See, Amen et al. reference at col 3, lines 40-50). The present invention on page 5, line 9 –18 teaches that the use of hydrocolloids would lead to undesirable air cell coalescence leading to some collapse of the present invention. Amen et al. teaches that colloids are desirable, in contrast the present invention finds colloids undesirable.

Additionally, the finished density and production of a desirable aerated product in Amen et al. is achieved after the pressurized product has been purchased by a consumer and dispensed from the aerosol container for consumption. Whereas in the present invention the desirable finished aeration or air cell formation is achieved at atmospheric pressure on page 18, line 1, within 24 to 48 hours after filling a package with the present invention.

The secondary reference, Norris et al., fails to cure the deficiencies of the Amen et al. reference because, for example, the Norris reference does not teach or even relate to a "low density, refrigerated, cultured, aerated milk composition," as claimed in the present invention. Norris et al. generally relates to an emulsifier that can be used in preparing bakery goods, salad dressing and oil sauces, confectionery products, or frozen desserts.

Moreover, to the extent Norris et al. discloses a hydrated emulsifier, Norris et al. teaches away from a “hydrated emulsifier blend comprising: a. about 0.5% to 1.5% wetting agent; b. about 7% to 15% lactylated mono- and di-glycerides; and c. water,” as claimed. Norris et al. discloses that “when the water content is increased above about 70 percent by weight . . . viscosity are difficult to handle and for that reason are undesirable (See, Norris et al. reference at col 2, lines 70-75). The present invention has a desirable water content above 70% in the hydrated emulsifier blend.

There is no motivation to modify the primary reference, Amen et al., by incorporating the hydrated emulsifier disclosed in Norris et al. into the Amen et al. shelf-stable aerosol dispensable yogurt product since Norris relates to a emulsifier that can be used in preparing bakery goods, salad dressing, etc.

The other secondary reference, Jackson, also fails to cure the deficiencies of the Amen et al. reference. The Jackson reference generally relates to “hydrated emulsifiers suitable for use in the food . . . industries.” However, similar to the Norris et al. reference, the emulsifier disclosed has a water content that is unacceptable for the present invention.

In view of the foregoing, applicants respectfully request that the rejection of claims 24-41 and 43-46 under 35 U.S.C. §103(a) as being unpatentable over Amen et al in view of Norris and Jackson be withdrawn and that the application be allowed.

The Examiner is invited to contact the undersigned, at the Examiner’s convenience, should the Examiner have any questions regarding this communication or the present patent application.

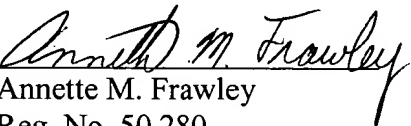
The Commissioner is hereby authorized to charge any fees associated with this response to deposit account number 07-0900.

Appl. No. 09/966,849
Amdt. Dated 30 March, 2004
Reply to Office Action of Oct. 3, 2003

WHEREFORE, reconsideration of the present application, entry of the proposed specification amendment, claim amendments, withdrawal of the rejection under 35 U.S.C. §103, and allowance of claims 24-41 and 43-46 are respectfully requested.

Respectfully submitted,

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